

## **Questions and Answers**

### **Peaking Generation RFP**

**Date of this update: April 21, 2003**

The California Consumer Power and Conservation Financing Authority (the “Authority”) released a Request For Proposals (“RFP”) for new peaking generation on February 28, 2003. Addendum No. 1 to the RFP was released March 17, 2003.

This list of questions and answers includes questions submitted to the Authority by email as well as questions raised during the pre-bid conference held March 12, 2003.

Note: Two new questions (41 & 42) have been added at the end of this document.

Any additional questions concerning either the RFP or this Addendum No. 1 should be submitted in writing to: [PeakerRFP@dgs.ca.gov](mailto:PeakerRFP@dgs.ca.gov)

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Q1. I just saw this RFP listed on your website and we’ve missed the cut-off of our intent to bid which was March 19<sup>th</sup>. Please advise.

A1. You are still free to bid. The RFP did not require that a potential respondent submit a notice of intent to respond by the deadline. Qualified proposals submitted by respondents that did not also submit a notice of intent to respond will still be considered. That said, however, the Authority prefers that respondents submit a notice of intent to respond as these will aid the Authority in this process as discussed in Section 3.2 of the RFP.

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Q2. Would the Authority consider allowing bidders to bid incremental capacity from combined cycle plants?

A2. No. The Authority is looking for stand-alone peaking facilities rather than combined cycle facilities in order to provide maximum scheduling and dispatch flexibility.

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Q3. Will the CPA only make awards up to 300 MW?

A3. The current target is approximately 300 MW. The eventual number depends on the willingness of utilities to contract for the output from these facilities.

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Q4. Is the project developer required to obtain emission offsets on the open market or can they be obtained from the state's offset bank?

A4. It is the responsibility of the project developer to obtain any required emission offsets on the open market.

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Q5. Is the price of emission offsets to be included in the proposal and within the \$500/kW threshold?

A5. Yes.

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Q6. There is a 10-minute grid synchronization requirement in the RFP. Since SCR catalysts may require a 30-minute ramp/warm-up, how is this to be accomplished? Will there be day-ahead notification (etc.) that a unit may be called?

A6. Ten-minute start capability is required. Any related considerations, such as emissions associated with SCR ramp/warm-up, should be considered by the respondent in establishing the proposed fixed turnkey price. Day-ahead scheduling is expected.

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Q7. Are "prevailing wages" and other standard state construction/service contract terms and conditions required for these projects?

A7. Yes. Also, in Attachment D to the RFP (entitled "Expected Scope of Work"), the construction scope of work lists the following, "Comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code in constructing the facility."

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Q8. What sort of agreement will the CPA provide the developer so that they can obtain construction financing?

A8. The Authority expects to execute a development agreement (between the developer and the Authority) backed by a power purchase agreement (between the Authority and the purchasing utility).

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Q9. A number of us (developers) went through this exercise with proposals to the CPA in 2001. Some of us spent a great deal of funds and received an LOI (i.e., Letter of Intent), only to have the LOI and subsequent award cancelled. How can we be assured that this scenario won't happen this time around?

A9. The Authority cannot provide assurance that contracts will be entered into as a result of this procurement. However, we believe that there are different factors in the California energy market this year as compared to 2001: the CPUC is making progress with the IOUs on long-term procurement plans, the IOUs are moving toward creditworthiness, and there is concurrence among the CEC and Cal-ISO that peaking capacity is needed in critical reliability areas. While the Authority received many excellent proposals in 2001, the window of opportunity for contracting with the Department of Water Resources subsequently closed before those projects could move forward. We believe that there is both a need and an opportunity before us now.

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Q10. Are standard CEC/local permitting rules applicable to these projects? Are there any accelerated permitting processes available or “sovereign” rights applicable because the state will be taking “title” to these projects?

A10. Standard rules apply. At the pre-bid conference on March 12, 2003, the CEC explained it has two processes: a six-month and a twelve-month. The CEC also indicated that it would hold a workshop for potential respondents to the peaker RFP. In addition, the CEC provided a handout that is available on the Authority’s website at: <http://www.capowerauthority.ca.gov/projects/PeakerRFP-Spring03.htm>

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Q11. Will the developer receive any state assistance in obtaining interconnection agreements and systems impact studies from the IOUs and UDCs?

A11. No, these activities are the responsibility of the developer.

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Q12. Are there any minimum system interconnection voltage requirements (i.e. 66 kV or higher)?

A12. Although there are no minimum voltage requirements per se, proposed projects must satisfy one of the following conditions: (1) interconnect to the Cal-ISO grid; or, (2) include arrangements for delivering the project output to the Cal-ISO grid and include in its fixed turnkey price the cost of these arrangements.

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Q13. Will the state be responsible for any systems transmission charge agreements with the Utility Distribution Companies (“UDCs”)? Or will the developer have to obtain these?

A13. These are the responsibility of the developer.

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Q14. Will the developer be exempt from any CIAC tax, sales/use tax, city property or utility taxes because the state is taking title to the project upon completion?

A14. No. A respondent's fixed turnkey price is an all-inclusive bid that shall include all applicable federal, state and local taxes associated with the development and construction of the project and payable by the developer. Respondents should assume no tax benefit or change in tax structure due to CPA participation in the project. Taxes and related items should be assumed to be the same as a contract structure associated with a development contract on an O&M contract for any IOU or other purchaser of similar electric services.

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Q15. As I understand the plan it is to have the Authority board of directors adopt a resolution authorizing the turnkey contract with a successful developer and so forth, so we have that commitment from the Authority that if we can complete the project on time, the turnkey price will be paid at the end.

A15. Yes, and that commitment will be in the form of a contract, anticipated to include customary types of provisions for performance and breach, including liability for damages by the party in breach.

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Q16. What credit stands behind the Authority's resolution? Will you have a firm commitment from a bond underwriter to issue the bonds? How do we know we're going to get paid?

A16. The credit and payment assurances are addressed through three key elements in the ultimate transaction: (1) a development agreement between the developer and the Power Authority; (2) a power purchase agreement between the Power Authority and the purchasing utility; and, (3) CPUC approval of the contracts. Once those three elements are in place and the Authority board has passed a resolution authorizing and directing us to go to the market, it would just be a matter of starting the wheels of underwriting. In advance of a bonding transaction, there will be no legal opinion of bond counsel on the issuance and no firm underwriting commitment. However, the Authority will have engaged both a nationally recognized law firm and investment banking company to perform the legal and banking services to bring the financing to market. The Authority will also enter into a binding agreement to provide financing for acquisition from the developer, subject to customary conduct of due diligence, satisfaction of contractual substance and form, and prevailing market conditions.

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Q17. The State of California has recently become involved in six gas turbines from the Williams settlement, and those have been assigned or will be assigned to some entities here in the state. Those six units just happen to add up to about 300 megawatts. Are those 300 megawatts included in this project, or is this something completely separate from those units?

A17. The Power Authority's peaking generation program is completely separate from the six LM6000 turbine generator units resulting from the Williams settlement. Those six

units have already been assigned—four units were assigned to the City and County of San Francisco and two units were assigned to the Kings River Conservation District. Those six units plus the Power Authority’s 300 MW program will help mitigate, but not completely solve, the need for additional peaking capacity in California.

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Q18. How are you going to determine in the given set of proposals the trade-off between Category 1 and Category 2? For example, if you have a \$450 per kilowatt Category 1 proposal and a \$600 per kilowatt Category 2 proposal, how are you going to decide where to allocate those megawatts in the evaluation process?

A18. The Authority will evaluate proposals to determine which proposals are likely to provide the greatest overall value and best fit the overall objectives and needs of the Authority’s peaking generation program.

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Q19. There are a couple of NP 15 zones identified in the RFP. Would you also consider a general peaking project someplace other than NP 15, or is this strictly focused on NP 15?

A19. No, this is not strictly focused on NP 15. We’ll consider projects in SP 15. It happens that with regard to Category 2 projects, the reliability sensitive areas that the Cal-ISO has identified are solely in the PG&E service territory. But outside of our focus on the objective of achieving some projects in some reliability areas, we are open to proposals statewide.

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Q20. If we put in a project that is either going to qualify for an SPPE or for a full AFC, but if the CEC does not meet their statutory requirements to issue the permit on the timeline, is that force majeure in terms of meeting the deadline of the contract?

A20. Force majeure is a factual determination, based on the definition contained in the development contract, which generally excuses failure to perform a contract requirement for specified reasons from becoming an immediate breach of contract. Many times the Energy Commission doesn’t meet its timeline because the applicants don’t provide information on a timely basis or run into other procedural or substantive issues, which cause delay. Once the development contract has been formed any claim of Force Majeure will be evaluated pursuant to the contract and facts asserted.

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Q21. What siting processes of the CEC may apply to these projects?

A21. The CEC has offered to hold a workshop in early April to discuss these and other CEC siting issues in more detail. Please watch both the CEC and CPA websites for details. In addition, the CEC provided a handout that is available on the Authority’s website at: <http://www.capowerauthority.ca.gov/projects/PeakerRFP-Spring03.htm>

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Q22. Do you have any estimate of the time it would take to get from the execution of the development agreement between the developer and the Authority, and the Authority issuance of a Notice to Proceed?

A22. Probably a minimum of a two-month period from the time all parties (i.e., the developer, the Authority, the contracting utility, and the CPUC) are in agreement that a particular project is a good idea and that we should proceed. In other words, this is not a linear process but is a parallel process requiring support from a number of distinct entities before a project can commence.

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Q23. Are you envisioning that this will or will not be a part of the CPUC procurement process?

A23. We envision that it will be concluded within the procurement process. The Authority is a party in the CPUC's procurement process. In that process several of the parties have noted the fact that there may be some high priority projects that need to get under way to meet needs in the 2005-06 time frame, and that those projects may need to be addressed earlier. Hence, there is some acknowledgement that there may be a reason to do that, and that there is an expedited means for the CPUC to accomplish that if they so concur. In our testimony in the procurement process, we have identified the Authority's peaker initiative as one set of projects that might need to be considered sooner.

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Q24. You are asking for bids in 30 days, but the system impact study process for utility interconnections can take much longer. How do you reconcile that?

A24. The Authority is looking for the best turnkey price. To the extent that the interconnection evaluation process for a developer's proposed project is not complete prior to submitting its bid to the Authority, the Authority expects that developers, drawing on their experience in such matters, may likely qualify its fixed turnkey price based on such a condition.

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Q25. On Page 4 of the RFP it says the Authority reserves the right to provide the necessary equipment for the new facilities. Does the Authority intend to do that?

A25. Although it is a remote possibility, it was simply prudent to include such a reservation in the RFP.

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Q26. In the reliability category (i.e., category 2), it appears that you only looked at investor-owned utility areas. Have you looked at any municipal systems and whether

there are reliability concerns in the municipal systems that would benefit from peaking generation?

A26. It happens that the information describing reliability sensitive areas in the attachments to the RFP only concern the Cal-ISO controlled grid. If a municipal utility were to request the Authority's assistance in adding new peaking capacity, the Authority would be receptive to that.

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Q27. The RFP discusses two broad categories: price and reliability location. Within both of those categories the RFP describes a weighting of 80 percent for price and 20 percent for on-line date. What about weighting other factors such as unit ramp capabilities, load time, and environmental impacts? Would those characteristics be weighted at all in the bid evaluation, or would it purely be focused on price and reliability?

A27. Yes there are other characteristics the Authority will take into consideration. Refer to Amendment No. 1 to the RFP for more details. The Amendment can be found on the Authority's website at: <http://www.capowerauthority.ca.gov/projects/PeakerRFP-Spring03.htm>

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Q28. How would a nonconforming bid be treated if it meets the price ceiling and it meets the on-line date? Are there certain criteria that you say are pass/fail that if we met most of those with a passing grade, but do not with one or two others, does the bid get rejected automatically? Or, would there be an opportunity for the Authority to consider that and waive those criteria?

A28. To the extent that there is some subjectivity in terms of something that is within a margin, we'll have to evaluate such situations on a case-by-case basis. If a proposal is strong and very desirable in every other way but there is some parameter that doesn't quite pass, we may contact the developer to obtain clarification regarding that parameter.

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Q29. One of your criteria in the RFP is that you want units to be permitted for 4,000 hours of operation. Might it not be better to invite proposals for projects permitted for up to 2,000 hours of operation?

A29. This issue is addressed in Amendment No. 1 to the RFP. The Amendment can be found on the Authority's website at: <http://www.capowerauthority.ca.gov/projects/PeakerRFP-Spring03.htm>

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Q30. You specify that the Authority reserves the right to propose alternate O&M strategies. Will you select that right at the last minute or up front?

A30. If the Authority exercised this right, it would be made after evaluation of the proposals received and before the development agreement is executed. In the RFP the Authority didn't require a specific structure for the provision of O&M services. We did suggest a way a respondent might think about doing that, but we are open to other suggestions. We are requiring that every proposal include a bid for the provision of O&M services, but the way a respondent structures that is up to the respondent. We are asking for the fixed turnkey price and the O&M bid in such a manner as to be separable.

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Q31. Could you clarify or confirm that projects slightly less than 50 megawatts would be acceptable?

A31. Yes, bids less than 50 megawatts would be acceptable. To clarify: the RFP only discusses project size (e.g., 50 megawatts) in the context of Category 2 proposals and the locations identified by the Cal-ISO in the attachments to the RFP. It was not discussed as a project size requirement of the RFP. Refer to the fifth paragraph of Section 1.12 (at the bottom of page 3) of the RFP.

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Q32. The RFP talks about the need for this to be new generation. Would the Authority consider existing projects that could be transferred to Authority ownership, or is this strictly for new capacity?

A32. This peaking initiative is strictly for new capacity.

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Q33. If you have a situation where you have two proposals, Proposal A and Proposal B and Proposal A ranks higher according to your ranking criteria, yet the IOU has a stronger interest in Proposal B. What would you do then?

A33. In that scenario, the Authority would likely give due consideration to whichever proposal presented the highest likelihood of obtaining a power sales agreement with the contracting utility.

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Q34. If we come in with a minimum dollar per kilowatt bid with a higher heat rate and someone else comes in with a higher dollar per kilowatt with a better heat rate, what happens?

A34. This issue is addressed in Amendment No. 1 to the RFP. The Amendment can be found on the Authority's website at:

<http://www.capowerauthority.ca.gov/projects/PeakerRFP-Spring03.htm>

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Q35. Suppose you received two Category 2 proposals: one is in an area where the Cal-ISO thinks new generation is needed and the other is perhaps not there but the IOU



happens to like the second one. How do you decide between the views of the Cal-ISO and the IOU?

A35. In that scenario, the Authority would likely give due consideration to whichever proposal presented the highest likelihood of obtaining a power sales agreement with the contracting utility. To the extent there is a difference of view between the IOU and the Cal-ISO, we'll work with them to ensure we actually get the reliability problem solved in a way that works.

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Q36. What is the evaluation team comprised of? Will it be an interagency team?

A36. Yes, it will be an interagency group, with the majority of the individuals coming from the Authority.

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Q37. Will the results of the bid process be made public, even in summary form, after it's all done?

A37. After it's all done, yes. All proposals marked confidential and not selected will be returned to the respondent.

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Q38. Some of us already own equipment and we're placing these bids and maybe discounting certain aspects of our bid because we own the equipment and want to place it. So at what point in the process are you going to commit to using our equipment rather than the equipment that you might be able to acquire?

A38. Before we negotiate the development agreement, that decision would be made. Again, the possibility of some entity offering some equipment to us that we would then use to substitute for the developer's equipment is a remote contingency; but, one that we didn't want to rule out.

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Q39. What are the minimum insurance and performance bond requirements that the developer is required to carry?

A39. It is the responsibility of the project developer to determine what sureties and guarantees are needed to obtain construction financing and complete the project developer's obligations under the Development Agreement. In this regard, the project developer should keep in mind that the developer is to hold title and bear all risks of loss for the facility until the Authority takes title to the facility after the facility (free of all liens) is certified as ready for commercial operation. Required coverage during this development/construction period may include, but not be limited to, comprehensive or commercial general liability for Project, automobile liability, umbrella excess liability insurance, professional liability errors and omissions insurance for the developer's

architects and engineers, workers' compensation insurance, employers' liability insurance, and builders risk insurance and performance or completion bonding related to the facility as a work of improvement. The developer will be required to bear responsibility that all subcontractors maintain all forms and types of insurance with respect to the subcontractors' employees as are required by applicable laws. During the operation period (i.e., after title has passed to the Authority), required insurance may include, but not be limited to, comprehensive or commercial general liability for Project, automobile liability insurance, umbrella excess liability insurance, workers' compensation insurance, and employers' liability insurance. The entity operating and maintaining the project for the Authority shall require that all subcontractors maintain all forms or types of insurance with respect to their employees as are required by applicable law. The project developer will also be required to carry any other liability insurance sufficient to protect and indemnify the Authority from any liability, to be specified in the Development Agreement.

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Q40. Could you explain the sequencing and rationale regarding the Authority's intention regarding the bonds being sold after construction starts?

A40. We are anticipating that the Authority's board of directors would adopt a formal resolution authorizing execution of the Development Agreement and committing the Authority to issue bonds on completion of the project as provided in the Development Agreement. The actual issuance of bonds would take place when the plant is ready for commercial operation and is ready to be transferred to the Authority as provided in the Development Agreement. The Authority does not plan to issue bonds substantially in advance of plant construction and completion. Rather, the Authority will schedule its bond issuance so that proceeds will be available at the time of operating certification in accordance with the Development Agreement. However, at the outset of the Development Agreement, and prior to the developer finalizing its own construction loan, the developer will have meaningful assurance of the Authority's commitment to provide the necessary financing to pay the developer. Successful bidders will have in hand an enforceable contractual obligation of the Authority, a public authority of the State of California, in the form of board resolution and executed agreement, to issue bonds at the time plant construction is complete and specifications are met.

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Q41. The RFP Addendum set a maximum allowable heat rate of 12,000 Btu/kWh. Is that LHV or HHV?

A41. LHV may be used.

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Q42. We are investigating several different sites for our response to the CPA for Category 2 substation locations; but, we will not have a specific site identified by the due date. Will this disqualify us during the proposal evaluation process?

A42. The Authority is looking for the best turnkey price. To the extent you've identified several potential sites located within proximity to one of the ISO-identified substations, but you need more time to select one of these sites, the Authority expects that developers, drawing on their experience in such matters, may likely qualify its fixed turnkey price based on such a condition. To avoid having your bid rejected, your turnkey price must be all inclusive.

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